

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ROSA MERCADO-SANTONI and
MARCOS MUÑÍZ-MERCADO,

Plaintiffs,

v.

HOSPITAL BUEN SAMARITANO, et al.,

Defendants.

Civil No. 09-1829 (JAF)

OPINION AND ORDER

Plaintiffs, Rosa Mercado-Santoni and Marcos Muñiz-Mercado, bring this diversity action for medical malpractice under Articles 1802 and 1803 of the Puerto Rico Civil Code, 31 L.P.R.A. §§ 5141–5142 (1999), against Hospital Buen Samaritano, Inc. (“HBS”) and various unknown defendants. (Docket No. 1.) HBS files for summary judgment, arguing that the statute of limitations for the cause of action has run out. (Docket No. 9.) Plaintiffs oppose. (Docket No. 16.)

We grant a motion for summary judgment “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A factual dispute is “genuine” if it could be resolved in favor of either party and “material” if it potentially affects the outcome of the case. Calero-Cerezo v. U.S. Dep’t of Justice, 355 F.3d 6, 19 (1st Cir. 2004).

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1 The movant carries the burden of establishing that there is no genuine issue as to any
2 material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In evaluating a motion for
3 summary judgment, we must view the record in the light most favorable to the nonmovant, and
4 we must consider the entire record of admissible evidence. See Reeves v. Sanderson Plumbing
5 Prods., 530 U.S. 133, 150–51 (2000). “Once the moving party has made a preliminary showing
6 that no genuine issue of material fact exists, the nonmovant must produce specific facts, in suitable
7 evidentiary form, to establish the presence of a trialworthy issue.” Clifford v. Barnhart, 449 F.3d
8 276, 280 (1st Cir. 2006) (internal quotation marks omitted). The nonmovant “may not rely merely
9 on allegations or denials in its own pleading; rather, its response must . . . set out specific facts
10 showing a genuine issue for trial.” Fed. R. Civ. P. 56(e)(2).

11 A tort suit brought under Articles 1802 and 1803 must be commenced within one year of
12 the first day the suit could have been filed. See 31 L.P.R.A. §§ 5298, 5299. In medical
13 malpractice cases, the term of one year to bring the action is calculated once the affected party
14 knows the origin of the damage and the reason for the cause of the damages. See Riley v.
15 Rodríguez de Pacheco, 19 P.R. Offic. Trans. 806, 821 (1987).

16 In this case, Mercado-Santoni knew of the origin and reason for the cause of action in
17 November 2007, at the latest. (Docket No. 9 at 8.) However, this lawsuit was filed on January 21,
18 2009, two months after the one-year term for filing the complaint had passed. (Docket No. 9 at
19 1.) Mercado-Santoni concedes that her claim is barred by the statute of limitations. (Docket
20 No. 16 at 1.)

